IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1995 OF 2005

WITH

WRIT PETITION NO.2987 OF 2005

WITH

WRIT PETITION NO.2988 OF 2005

D.K.Guliani & Ors. ..Petitioners.

Vs.

National Consumer Disputes
Redressal Commission & Ors. ..Respondents.

....

Mr.Arif Bookwala with Ms.Sonal i/b Ms.A.K.Bakshi for the Petitioners.

None for Respondent Nos.1 to 3.

Mr.A.G.Damle for Respondent No.4.

....

CORAM : A.P.SHAH &

DR.D.Y.CHANDRACHUD, JJ.

22nd June, 2005.

P.C. :

All these Petitions have by consent been heard together since they raise similar issues.

WRIT PETITION 1995 OF 2005

1. The Fourth Respondent filed a consumer complaint against the First Petitioner praying for an order directing the handing over of a residential flat that was booked by the Fourth Respondent or, in the alternative, for the refund of an amount of Rs.3,50,000/- together with interest at the rate of 18% per annum. The complaint was dismissed by the District Consumer Disputes Redressal Forum on the ground of limitation.

2. In a revision filed by the Fourth Respondent, the State Consumer Disputes Redressal Commission set aside the order of the District Forum and remitted the proceedings back to the District Forum for disposal on merits. The First Petitioner was served in the proceedings before the State Consumer Disputes Redressal Commission and was present before the Commission. The proceedings

show that there were three similar complaints filed by flat purchasers which had been dismissed initially by the District Forum and in which the State Commission set aside the orders of the District Forum and remanded the proceedings for fresh consideration on merits.

3. Thereupon, the District Forum allowed the complaints and passed orders for refund with interest. The appeals filed by the First Petitioner were dismissed by the State Consumer Disputes Redressal Commission on 20th November, 2003. A grievance was made before the State Commission that service had not been effected after the proceedings were remanded back to the District Forum. The State Commission recorded in its appellate order that it had sent for the record and proceedings of the District Forum. The State Commission found that the record contained several postal envelopes which were forwarded to the builder at his known address, which were returned back as 'not claimed'. The State Commission came to the conclusion that an attempt had been made on the part of the First Petitioner to evade service. In any event, the First Petitioner was aware of the

proceedings since he was present before the State Commission when the initial order of remand came to be passed by which the District Forum was directed to dispose of the complaints expeditiously.

4. The orders of the State Consumer Disputes Redressal Commission were carried in appeal, before the National Consumer Disputes Redressal Commission. The appeals were dismissed on 5th March, 2004. The National Commission noted that after the State Commission had remanded the proceedings back to the District Forum, it was not the case of the First Petitioner herein that he had ever enquired about the status of the complaints before the District Forum. The National Commission also noted that the notices which were issued to the First Petitioner at his residential address were received back with the postal endorsement as 'not claimed'. The First Petitioner had earlier put in an appearance before the State Commission upon being served at the same address.

5. After the dismissal of the proceedings by the National Consumer Disputes Redressal Commission, the Fourth Respondent initiated

execution proceedings on 17th March, 2004. An application for stay was preferred therein which was dismissed by the District Forum and the First Petitioner was directed to file an affidavit disclosing his assets. It appears that the First Petitioner had filed a criminal complaint and an application was made for the stay of the execution proceedings during the course of the investigation of the complaint. A revision was filed before the State Commission which was dismissed on 25th January, 2005.

6. After the dismissal of the revision, the First Petitioner in fact filed two affidavits before the District Forum. In the first affidavit dated 8th February, 2005, the First Petitioner stated that he intended to comply with the order passed by the District Forum. However, he claimed that his income was only Rs.4,500/- per month and he prayed for the grant of instalments. In the subsequent affidavit dated 22nd February, 2005, the First Petitioner stated that he was in a position to pay only a monthly instalment of Rs.15,000/- in respect of the decrees which were passed in the three complaints, but once again reiterated that he

intended to comply with the order of the District Forum.

7. This Petition was filed in this Court on 10th March, 2005 in order to challenge (i) the order of the National Consumer Disputes Redressal Commission dated 5th March, 2004; (ii) the order dated 19th November, 2003 of the State Consumer Disputes Redressal Commission which was confirmed by the National Commission; and (iii) the original order of the District Commission dated 21st July, 2002. The Petition has been filed one year after the order of the National Commission. As we have already noted, the First Petitioner had filed affidavits before the District Forum in the execution proceedings recording that he intended to comply with the original order of the Forum. These proceedings are clearly an abuse of the process.

8. That apart, even on merits, the only submission which has been urged before the Court is to the effect that the First Petitioner was not duly served by the District Forum after the initial order of remand. This submission has been examined by the State Commission and the National

Commission. We find that there is no valid reason to take a different view. The First Petitioner was present before the State Commission and it is admitted that he was duly served with the proceedings before the State Commission which culminated in the order of remand. The First Petitioner was aware of the proceedings before the District Forum and as the National Commission has noted, it is not the case of the Petitioners that any effort was made to enquire about the proceedings before the District Forum. There is a concurrent finding that the First Petitioner has evaded service and that the postal envelopes were returned to the District Forum as 'not claimed'. In these circumstances, there is no merit in the Petition.

9. Before this Court on 8th April, 2005, the Petitioners had undertaken to deposit a sum of Rs.2 lacs and to furnish security for the balance to the satisfaction of the Registrar - General. The Fourth Respondent was permitted to withdraw the amount of Rs.2 lacs subject to furnishing security to the satisfaction of the Registrar - General. The Petitioners have deposited an amount of Rs.2

lacs on 28th April, 2005 and initially furnished a bank guarantee dated 27th April, 2005 in the amount of Rs.1,50,000/-. There is an office noting that the Bank Guarantee was returned to the Petitioners since there were certain errors therein, for rectification. In view of the dismissal of these proceedings, we permit the Fourth Respondent to withdraw the amount of Rs.2 lacs, if it has not already been withdrawn and the security, if any, furnished by the Fourth Respondent shall stand discharged. We also direct the Registrar - to invoke and encash the bank guarantee that was undertaken to be furnished on behalf of the Petitioners. In view of the undertaking which was furnished before the Division Bench on 8th April, 2005, on behalf of the Petitioners, the Petitioners shall, if a rectified bank guarantee has not been furnished as required by the Registry, deposit an equivalent amount within a period of two weeks. The amount of the bank guarantee, or as the case may be, the amount equivalent thereto shall upon deposit be permitted to be withdrawn by the Fourth Respondent towards satisfaction of the decretal claim.

The Petition is accordingly disposed of.

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10. The District Forum has in exercise of powers conferred by Section 27 of the Consumer Protection Act, 1986 sentenced the First Petitioner to undergo simple imprisonment for a period of one year each for non-compliance of the orders passed by the Forum in Complaints 47 of 1998, 150 of 1998 and 45 of 1999. During the course of these proceedings, the execution of the warrant was stayed subject to the Petitioner depositing certain amounts and furnishing security for the balance. The amounts as directed were deposited. There is an office noting that the bank guarantees were returned for rectification of certain errors.

11. During the course of these proceedings we had enquired of the learned counsel appearing for the Petitioner as to whether the Petitioner would even at this stage be ready and willing to comply with the orders of the District Forum which have

since been confirmed by the State Commission and by the National Commission. No offer for payment is forthcoming. The District Forum has noted that the total decretal amount in the three complaints works out to Rs.19,09,738/- as on 31st January, 2005. The Petitioner had initially offered monthly instalments, but stated that his total income was only Rs.4,500/-. The offer has in our view justifiably been rejected as not being bonafide.

12. The original orders of the District Forum for the refund of consideration received for the allotment of flats together with interest were confirmed both by the State Commission and by the National Consumer Disputes Redressal Commission. Despite having made a statement on 8th and 22nd February, 2005 before the District Forum in the execution proceedings, that the Petitioner intended to comply with the order of the District Forum, the companion writ petition (Writ Petition 1995 of 2005) was filed nearly one year after the order dated 5th March, 2004 of the National Commission in order to challenge the said order. We have dismissed the said petition. The conduct of the Petitioner is lacking any bonafides. Ample

opportunities have been given to the Petitioner to repay the decretal dues. No bona fide offer for payment is forthcoming. The District Forum was in these circumstances constrained to take recourse to the provisions of Section 27.

13. While we do not find any merit in the Petition, we are inclined in the interests of justice to allow the Petitioner some reasonable time to pay the decretal dues, having regard to the serious consequences of an order under Section 27.

14. We accordingly pass the following order :

(i) The Fourth Respondents to the respective Petitions are allowed to withdraw the amounts deposited by the Petitioner towards satisfaction of the decretal dues in each of the Petitions;

(ii) The respective bank guarantees shall be invoked and the proceeds thereof shall be paid to the Fourth Respondents to the respective Petitions towards satisfaction of the decretal dues. In the event that bank guarantees, duly

rectified, have not been furnished by the Petitioner to the Registry, the Petitioner shall deposit an equivalent amount within a period of two weeks which shall be permitted to be withdrawn by the Fourth Respondents respectively towards satisfiaction of their decretal dues;

(iii) The Petitioner shall have time to deposit the balance of the decretal dues before the District Forum in equal instalments which shall be payable on or before 31st October, 2005, 30th November, 2005 and 31st December, 2005. In the event that all the decretal dues inclusive of interest are discharged, the order of the District Forum dated 31st March, 2005 shall stand quashed and set aside.

(iv) In order to enable the Petitioner to comply with these directions, coercive steps in implementation of the impugned order of the District Forum dated 31st March 2005 shall not be taken till 31st December 2005. The aforesaid direction shall stand vacated without further reference to this Court in the

event that the Petitioner commits any default in payment in accordance with the time schedule indicated hereinabove.

The Petitions are accordingly disposed of.